

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Fidencio DUARTE-Hernandez,

Defendant.

Magistrate Case No. **'07 MJ 2672**

BY: *pol*

DEPUTY

COMPLAINT FOR VIOLATION OF

Title 8, U.S.C., Section 1326
Attempted Entry After
Deportation

The undersigned complainant being duly sworn states:

On or about **November 13, 2007**, within the Southern District of California, defendant **Fidencio DUARTE-Hernandez**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, attempted to enter the United States with the purpose; i.e. conscious desire, to enter the United States at the **Otay Mesa, California, Port of Entry**, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


SIGNATURE OF COMPLAINANT
Sara Esparagoza, United States Customs
and Border Protection Enforcement Officer

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS **15TH** DAY OF **NOVEMBER, 2007**.


UNITED STATES MAGISTRATE JUDGE

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PROBABLE CAUSE STATEMENT

On November 13, 2007 at approximately 7:55 p.m., **Fidencio DUARTE-Hernandez (Defendant)** made application for admission into the United States from Mexico at the vehicle entrance of the Otay Mesa, California Port of Entry. Defendant was a passenger in a 1996, Ford Taurus. Upon inspection before a United States Customs and Border Protection Officer, Defendant presented a Permanent Resident Card (I-551) bearing his name, date of birth, alien number and photograph. Defendant was asked what, if anything, he was bringing from Mexico. Defendant gave a negative declaration. Defendant further stated he was going home. Defendant's information was queried through a database resulting in a computer generated referral. The Defendant, vehicle and its occupants were subsequently escorted to vehicle secondary.

In secondary, Immigration Service records checks including the Deportable Alien Control System (DACS) identified Defendant as a deported alien. DACS information indicated that on or about November 8, 2007 an Immigration Judge ordered Defendant removed from the United States. Immigration Service records contain no evidence that Defendant has applied for or received permission from the Attorney General of the United States, or the Secretary of the Department of Homeland Security to legally re-enter the United States.

Defendant's fingerprints and photograph were queried through the Automated Biometric Identification System (IDENT). IDENT returned a match to the query, identifying Defendant as a deported alien and citizen of Mexico. Defendant's identity was verified by 10-digit fingerprint submission through the Integrated Automated Fingerprint Identification System (IAFIS) and linked Defendant to FBI and Immigration Service records.

On November 14, 2007, at about 12:41 AM, during a videotaped proceeding, Defendant was advised of his Miranda rights. Defendant acknowledged his rights and agreed to answer questions without benefit of counsel. During a subsequent interview, Defendant admitted he is a citizen of Mexico by birth in Michoacan, Mexico. Defendant admitted he no longer had valid documents that would permit his legal entry into the United States. Defendant admitted he has been previously deported from the United States and removed to Mexico. Defendant stated he never surrendered his I-551 upon his removal. Defendant admitted he has not applied for or received permission from the United States government to legally re-enter the United States. Defendant admitted that he intended to enter the United States to resume living and working in Fresno, California.